



# HOUSE BILL 168: DNCR Agency Bill.

2023-2024 General Assembly

---

<b>Committee:</b>	Senate Rules and Operations of the Senate	<b>Date:</b>	June 15, 2023
<b>Introduced by:</b>	Reps. K. Hall, Wray	<b>Prepared by:</b>	Aaron McGlothlin
<b>Analysis of:</b>	Third Edition		Staff Attorney

---

**OVERVIEW:** *House Bill 168 would make various changes to the statutes governing the Department of Natural and Cultural Resources (Department), as recommended by the Department.*

## CURRENT LAW & BILL ANALYSIS:

### CONFORMING CHANGE TO INCREASE THE SIZE OF THE NORTH CAROLINA MUSEUM OF ART BOARD OF TRUSTEES

Under current law, the Board of Trustees of the North Carolina Museum of Art consists of 25 members, 13 of whom are appointed by the Governor from each congressional district.

**Section 1** would increase number of gubernatorial appointments to the Board of Trustees of the North Carolina Museum of Art to 14 to reflect the current number of congressional districts in the State, increasing the total number of members to 26.

### CLARIFY SURPLUS PROPERTY PROCESS FOR MUSEUMS AND AQUARIUMS

With the approval of the Historical Commission, the Department may dispose of any accessioned records, artifacts, and furnishings in the custody of the Department that are determined to have no further use or value for official or administrative purposes or for research and reference purposes. Other statutes govern the disposition of surplus property.

**Section 2** would authorize the Department to dispose of agricultural products that are determined to have no further use or value for official or administrative purposes or for research and reference purposes.

Section 2 also would authorize the following to be leased or donated:

- Artifacts owned by the State of North Carolina and in the custody of and curated by the Office of Archives and History unless the lease or donation would be contrary to the terms of acquisition.
- Artifacts from the collection of the North Carolina Maritime Museum unless the lease or donation would be contrary to the terms of acquisition.
- Artifacts and furnishings in the custody of the Tryon Palace Commission, or its appointed officers, that have no further value for official or administrative purposes or for research, reference, or interpretation. Monies the Commission receives from a sale or lease, after deducting expenses of the sale or lease, must be used for expenses associated with the purchase, maintenance, or conservation of artifacts and furnishings.

Jeffrey Hudson  
Director



Legislative Analysis  
Division  
919-733-2578

# House Bill 168

Page 2

- Works of art owned by the North Carolina Museum of Art if the Board of Trustees of the North Carolina Museum of Art finds that it is in the best interest of the Museum to do so unless the lease or donation would be contrary to the terms of acquisition.

Section 2 would make the following other changes:

- Provide that if any property in the Executive Mansion is sold *or leased*, the net proceeds of each sale of lease and any interest is deposited in the State Treasury and must only be used for the purchase, conservation, restoration, or repair of other property for use in the Executive Mansion.
- Provide that exhibits, exhibit components, or objects from the collections of the North Carolina Aquariums may be donated in addition to being sold, leased, or traded.
- Permit the Department to sell, lease, donate, or trade any object from the collection of the Museum of Natural Sciences when it would be in the best interest of the Museum to do so.

## TIME LIMITATION ON CONFIDENTIALITY OF CERTAIN PUBLIC RECORDS

The North Carolina Public Records Law provides that all restrictions on access to public records expire 100 years after the creation of the record. This does not require the opening of any record that meets the following criteria: (1) is ordered sealed by a state or federal court; (2) is prohibited from disclosure under federal law; (3) contains Social Security Numbers; (4) is a juvenile, probationer, parolee, post-release, or prison inmate record, including medical and mental health records; and (5) contains detailed plans and drawing of public buildings and infrastructure facilities.

**Section 3** would authorize records related to probationers, parolees, post-release, and prison inmate records to be treated as public records after 100 years, subject to other prohibitions. Confidential juvenile court records would still be exempt from release.

## STATE PARKS REPORT CONSOLIDATION

G.S. 143B-135.48 requires the Secretary of Natural and Cultural Resources to prepare and adopt a State Parks System Plan. The Plan must: outline a method so the purposes of the State Parks System can be achieved in a timely, cost-effective manner; evaluate existing parks to determine their statewide significance; identify deficiencies and recommend corrections; describe the resources of the State Parks System, identify conflicts created by those uses, and propose solutions; describe anticipated trends and recommend methods to accommodate those trends successfully. The Secretary must revise the Plan at intervals not exceeding five years.

**Section 4** would amend the State Park Systems Plan to require that the plan validate the number of visitors per car used in the calculation of visitor counts at units of the State Parks System. It would also remove a similar reporting requirement applicable to the Department of Environmental Quality.

## CONFORMING CHANGE TO NATURE PRESERVES ACT

**Section 5** would amend the statute allowing the Secretary to establish fees to defray the costs of certain activities, to remove a reference to a statute that was previously repealed.

# House Bill 168

Page 3

## UMSTEAD ACT EXEMPTION FOR LODGING FACILITIES AT STATE PARKS

The Umstead Act generally prohibits North Carolina government agencies from competing with the private commercial activities of North Carolina citizens. G.S. 66-58. The Department currently has an exception for sale of food, the sale of books, gifts, and other tourism-related items and revenues from public and private special events, activities, and programming at State parks, State aquariums, historic sites and museums administered by the Department, provided that the resulting profits are used to support the operation of those sites. This exemption does not allow the Department to construct, maintain, operate, or lease a hotel or tourist inn in any site or facility over which it has jurisdiction, except that the North Carolina Zoological Park may lease a portion of the Park on which a private entity may construct and operate a hotel and related facilities.

**Section 6** expressly would exempt the following from the Umstead Act:

- Existing lodging facilities located at Haw River State Park, Hanging Rock State Park, and Pisgah View State Park.
- A hotel and related facilities constructed and operated by a private entity on land leased from the North Carolina Zoological Park.
- Rentals of rustic cabins and recreational vehicle or tent sites in State parks.

## CLARIFY ZOOLOGICAL PARK STATUTES

**Section 7** would amend the zoological park statutes in the following ways:

- Provide that the North Carolina Zoological Park Council may advise the Secretary on concepts for the zoological park and recommend admission fees for approval by the Secretary.
- Specify that the Secretary may approve the use of the North Carolina Zoo Fund under certain circumstances and would not require the recommendation of the North Carolina Zoological Park Council.
- Allow the Council *and* the Secretary to receive gifts for the zoo.
- Provide that the Secretary may receive and expend funds for the operation and maintenance of the zoo.
- Provide that the Secretary may set admission fees as recommended by the Council.
- Authorize the Secretary to donate any exhibit, exhibit component, or object from the collections of the North Carolina Zoological park.
- Provide that the Department, not the Council, has powers regarding fee negotiations, contracts, and capital improvements.

## NC LAND AND WATER FUND CLARIFICATION OF CONSTRUCTION CONTRACT REQUIREMENT

Under current law, an award of a grant from the North Carolina Land and Water Fund is withdrawn if the grant recipient fails to enter into a construction contract for the project within one year after the date of the award, unless the Trustees find that the applicant has good cause for the failure. If the Trustees find good cause for a recipient's failure, the Trustees must set a date by which the recipient must act or forfeit the grant. G.S. 143B-135.238(e).

# House Bill 168

Page 4

**Section 8** would clarify that G.S. 143B-135.238(e) applies to grants that require construction contracts and would clarify that the award would be withdrawn if the grant recipient fails to enter into a construction contract within one year after the date of the execution of the grant contract unless there is good cause for the failure.

## **CONFORMING CHANGES FOR RENAMING OF CLEAN WATER MANAGEMENT TRUST FUND AS NORTH CAROLINA LAND AND WATER FUND**

In 2019, the Clean Water Management Trust Fund became known as the Land and Water Fund. However, some statutes use the former name of the fund.

**Section 9** would make conforming changes in State law to rename the Clean Water Management Trust Fund the North Carolina Land and Water Fund.

## **REVISIONS TO THE NORTH CAROLINA LAND AND WATER FUND BOARD OF TRUSTEES**

The Board of Trustees of the North Carolina Land and Water Fund may acquire land by purchase, negotiation, gift or devise; provided that (i) any land acquisition be reviewed and approved by the Council of State and (ii) a deed for land is approved by the Attorney General before an acquisition can become effective.

**Section 10** would allow the Council of State to delegate approval authority for land acquisitions proposed by the Board of Trustees. Also, this section would revise the Attorney General's review of proposed land acquisitions to provide that deeds for land in fee simple absolute are subject to Attorney General approval before the acquisition can become effective.

## **CLARIFY PUBLIC RECORDS STATUTE RELATED TO PHOTOGRAPHS AND VIDEO RECORDINGS OF DERELICT VESSELS AND SHIPWRECKS**

The North Carolina Public Records Law broadly defines "public records" as "all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions."

G.S. 121-25(b) provides more specifically that "[a]ll photographs, video recordings, or other documentary materials of a derelict vessel or shipwreck or its contents, relics, artifacts, or historic materials in the custody of any agency of North Carolina government or its subdivisions shall be a public record pursuant to Chapter 132 of the General Statutes."

**Section 11** would repeal G.S. 121-25(b).

## **CHEROKEE MOUND TECHNICAL CORRECTION**

**Section 12** would amend the 2021 Appropriations Act, as amended, to clarify that \$813,400 previously appropriated to the Department of Natural and Cultural Resources to acquire certain land interests at Nikwasi Town and Watauga Town Cherokee Settlements shall be provided as a grant to Mainspring Conservation Trust, Inc., for land acquisition at the Nikwasi Town and Watauga Town Cherokee mound sites.

# House Bill 168

Page 5

## STATE NATURE AND HISTORIC PRESERVE ADDITIONS AND DELETIONS

Section 5 of Article XIV of the Constitution of North Carolina provides for addition of properties to and removal of properties from the State Nature and Historic Preserve by a law enacted by a three-fifths vote of the members of each house of the General Assembly. The Preserve is intended to ensure that lands and waters acquired and preserved for public park, recreation, conservation, and historic preservation purposes continue to be used for these purposes. Upon inclusion in the Preserve, these lands may not be used for other purposes except as authorized by a law enacted by a vote of three fifths of the members of each house.

Properties were last accepted in the Preserve in 2022. Since that time over 4,560 acres of land at 18 different park units have been added to the North Carolina State Parks System. The Council of State met on May 2, 2023, and petitioned the General Assembly to accept into the Preserve various State parklands and historic sites. The petition also requested that certain small parcels be deleted from the Preserve for various reasons (in order to improve management of units and to authorize broadband services on an existing tower).

**Section 13** would add the following units to the State Nature and Historic Preserve: Bakers Lake State Natural Area, Bethabara Park, Bethania Walnut Bluffs, Shallow Ford of the Yadkin State Historic Site, and Thomas Day House/Union Tavern State Historic Site.

This bill would also except from dedication and remove four parcels from the Preserve. The following explanation of the parcels to be removed from the Preserve has been provided by the Department of Natural and Cultural Resources:

- **South Mountains State Park:** This clause authorizes the use of South Mountains State Park property for a broadband provider to be located on a State-owned tower. When this property was acquired by the State, this property was subject to an existing lease to a broadband provider. The service provider and the Department want to continue the use of the tower for broadband services in support of providing broadband access to rural communities. Communications towers and tower sites are not public purposes allowed in the State Nature and Historic Preserve, so this use must be authorized by a three-fifths vote of the General Assembly.
- **Occoneechee Mountain State Natural Area:** This clause excepts a small tract totaling approximately 2,662 square feet needed for a permanent drainage easement for a highway construction project.
- **Lumber River State Park:** This clause excepts two small tracts totaling 9,573 square feet needed for permanent drainage and utility easements for a highway construction project.
- **Hanging Rock State Park:** This clause excepts approximately 0.155 acres along the western boundary of State park land adjacent to Evans Road. At the time of acquisition, the State boundary was established by a survey as being on the western side of the road instead of its eastern boundary. This amendment will correctly reflect where the boundary should be. The property also needs to be deleted from the State Parks System.

**EFFECTIVE DATE:** Except as otherwise provided, the bill would be effective when it becomes law.

\*Brad Krehely and Brian Gwyn, Staff Attorneys for the Legislative Analysis Division, substantially contributed to this summary.